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E-Filed on 3/14/08

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Attorneys for USACM Liquidating Trust

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY ADVISORS, LLC,

USA CAPITAL DIVERSIFIED TRUST DEED
FUND, LLC,

USA CAPITAL FIRST TRUST DEED FUND,
LLC,¹

USA SECURITIES, LLC,²

Debtors.

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR¹
Case No. BK-S-06-10729-LBR²

Chapter 11 Cases

Jointly Administered Under Case No. BK-S-
06-10725 LBR

Judge Linda B. Riegle Presiding

**MOTION TO CONSOLIDATE
USACM LIQUIDATING TRUST'S
AMENDED OBJECTION TO THE
ALLOWANCE OF LOS VALLES
LAND & GOLF'S CLAIM WITH
ADVERSARY CASE NO. 08-01058**

Hearing Date: May 8, 2008

Hearing Time: 10:30 a.m.

Pursuant to the Federal Rules of Bankruptcy Procedure, Rules 3007 and 7001, the
USACM Liquidating Trust (the "USACM Trust") moves to consolidate the resolution of

¹ This bankruptcy case was closed on October 12, 2007.

² This bankruptcy case was closed on December 26, 2007.

1 its Amended Objection to Claim No. 10725-01366 filed by Los Valles Land & Golf, LLC
2 (“Los Valles”) [DE 4820] with Adversary Case No. 08-01058.

3 **1. Factual and Procedural Background.**

4 On March 3, 2004, USA Commercial Mortgage Company (“USACM”) entered into
5 a Loan Agreement and other agreements pursuant to which USACM arranged for an
6 \$11,700,000 loan to Defendant Los Valles to fund a 209 lot residential subdivision located
7 in Los Angeles County, California. Los Valles secured the loan with a deed of trust and
8 Defendant Dan S. Palmer, Jr. (“Palmer”) guaranteed the loan.

9 In September 2006, disputes arose between Los Valles, Palmer and USACM over
10 the payoff amount for the loan. By “Letter Agreement” dated October 6, 2006, Los
11 Valles, Palmer and USACM reached a compromise. USACM agreed to release the deed
12 of trust and waive the other fees due under the original Loan Agreement. Los Valles
13 agreed to pay all principal and interest due on the loan, and to pay USACM a “deferred
14 extension fee” of \$586,045.83 by December 31, 2007 and an additional fee on each lot
15 sold. Palmer personally guaranteed the Letter Agreement for Los Valles.

16 In November 2006, Los Valles filed Proof of Claim No. 10725-01366. On
17 September 20, 2007, the USACM Trust filed its amended objection to Proof of Claim No.
18 10725-01366 [DE 4820]. In early November 2007, counsel for Los Valles indicated that,
19 pending the outcome of Los Valles’ claim against USACM, Los Valles did not intend to
20 make the \$586,045.83 payment due under the Letter Agreement or any of the other
21 payments. By letter dated December 4, 2007, the USACM Trust’s attorney inquired
22 whether Palmer would make the \$586,045.83 payment as the guarantor. Palmer’s counsel
23 refused to answer the inquiry and indicated that he was researching Mr. Palmer’s defenses
24 to the guarantee. When the payment came due on December 31, 2007, neither Los Valles
25 nor Palmer made the payment.
26

On December 21, 2007, the USACM Trust moved to amend its claim objection to include a counterclaim against Los Valles and Palmer based upon their anticipatory repudiation of the Letter Agreement [DE 5529]. Before the Court heard the motion to amend, however, the parties stipulated that the Court grant the USACM Trust leave to file a counterclaim against Los Valles and that, pending the outcome of a settlement conference, the USACM Trust would withdraw the motion to amend as it pertained to Palmer [DE 5691].

Because Rule 3007(b), effective December 1, 2007, prohibits filing a counterclaim as part of an objection to a claim, the USACM Trust filed an adversary complaint against Los Valles on February 26, 2008, which was assigned Adv. Case No. 08-01058. The parties did not reach a settlement at the March 3, 2008 settlement conference. On March 13, 2008, USACM filed its amended adversary complaint, which included a claim against Palmer as the guarantor of the Letter Agreement.³

2. The Objection Should Be Consolidated With Adversary Case No. 08-01058.

Bankruptcy Rule 3007(b) provides that an objection to the allowance of a claim may be included as part of an adversary proceeding. The USACM Trust's objection and the adversary complaint should be litigated together. The facts of the two underlying transactions are intertwined and the parties are the same. Los Valles has already stipulated that the objection and the adversary proceeding should be consolidated [DE 5691]. That the USACM Trust has now made Palmer a defendant in the adversary proceeding should not make any difference. The Court should grant this motion and order that the USACM Trust's first amended objection to Proof of Claim 10725-01366 be consolidated with and made part of Adv. Case No. 8-01058.

³ Because Los Valles has not filed an answer to the complaint, the USACM Trust is entitled to amend its adversary complaint as a matter of right. Fed. R. Civ. P. 15(a), made applicable here by Bankruptcy Rule 7015.

LEWIS
AND
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LAWYERS

RESPECTFULLY SUBMITTED March 14, 2008.

LEWIS AND ROCA LLP

By /s/ RC (#006593)
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Copy of the foregoing served by e-mail if an e-mail address was available or first class postage paid U.S. Mail on March 14, 2008 on the parties listed on Post-Effective Official Service List for Limited Notice No. 4 Dated January 8, 2008 and the following:

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